

COBB COUNTY SUPERIOR COURT  
CASE EVALUATION RULES

## Case Evaluation Rules

**Case Evaluation has been implemented to provide an alternative method of dispute resolution once a case has been referred to mediation. If all parties agree to use case evaluation, the following rules will apply.**

DEFINITION: Case Evaluation is a confidential, non-binding process in which a lawyer with expertise in the subject matter of the litigation acts as a neutral evaluator of the case. Each side has the opportunity to present a brief summary of its evidence and legal theories. The evaluator assesses the strengths and weaknesses of each side's case and assists the parties in narrowing the legal and factual issues in the case. The evaluator has no decision-making authority and is in no way acting as an agent for the assigned judge. This conference occurs early in the discovery process and is designed to "streamline" discovery and other pretrial aspects of the case. The evaluation of the case may also provide a basis for private settlement discussions or mediation.

### RULE 1. Referral to Case Evaluation.

- (a) Except as hereinafter provided, once a case has been referred to the mediation process, the parties may request that the alternative dispute resolution method of case evaluation be utilized.
- (b) Exclusions from ADR. The following actions shall not be referred to ADR except upon petition of all parties or upon sua sponte order of the court:
  - (1) Appeals from rulings of administrative agencies;
  - (2) Forfeitures of seized property;
  - (3) Habeas corpus and extraordinary writs;
  - (4) Bond validations;
  - (5) Declaratory relief;
  - (6) URESA actions;
  - (7) Temporary hearing in domestic relations cases;
  - (8) Contempts in domestic relations cases.
- (c) Discovery. Discovery may continue throughout case evaluation.
- (d) The scheduling of a case for a case evaluation conference shall not remove the case from assignment to a judge, interfere with discovery, nor serve to postpone scheduled motions before the court. The court may refer the matter to case evaluation before any hearings before the court.
- (e) Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. Case Evaluation shall continue while such a motion is pending absent a contrary order of the court or a decision of the case evaluator to adjourn pending disposition of the motion. Time for completing case evaluation shall be tolled during any periods where case evaluation is interrupted pending resolution of such a motion.

## RULE 2. Timing of ADR Processes.

- (a) Notice. Within 10 calendar days after the case is referred to mediation, one of the parties shall contact the ADR office with the full agreement of all parties that they would like to use Case Evaluation in lieu of mediation. At this time, they should also inform the ADR office of the name of the agreed upon certified case evaluator and the date and time for the case evaluation. In a multi-party case, the case shall not be referred to any ADR process until the time for an answer by all parties has elapsed. Notice to the ADR office is technically plaintiff's responsibility. Upon agreement, however, anyone may schedule the ADR conference.
- (b) Conference or Hearing Date. Unless otherwise ordered by the court the first case evaluation conference shall be held within 60 calendar days after the appointment of the case evaluator.

## RULE 3. Appointment of a Case Evaluator.

- (a) The parties shall choose a case evaluator from the list of certified case evaluators in the ADR office. Should the parties fail to agree upon a case evaluator, the ADR office will appoint a case evaluator from the rotational list in the ADR office.
- (b) Disqualification of a Case Evaluator. Any party may move to enter an order disqualifying a case evaluator for good cause. If the court rules that a case evaluator is disqualified from hearing a case, an order shall be entered setting forth a qualified replacement from the rotating list of certified case evaluators in the ADR office. The motion disqualifying the case evaluator shall be presented to the ADR office which shall present the motion to the assigned judge.

## RULE 4. Case Evaluator Qualifications.

The qualifications for certification as a case evaluator shall be determined by the Superior Court Judges of the Cobb Judicial Circuit. The qualifications shall not be less than the minimum qualifications set out in the Uniform Rules for Alternative Dispute Resolution Programs. The qualifications shall be approved by the Georgia Commission on Dispute Resolution and shall be filed with the Georgia Supreme Court as an appendix to this rule.

## RULE 5. Compensation of Case Evaluators.

- (a) Parties are encouraged to agree upon compensation of the case evaluator at the first case evaluation conference. Relevant factors to be considered in determining an appropriate fee include the complexity of the litigation, the degree of skill necessary to

evaluate the dispute, and the ability of the parties to pay. Case Evaluators are required to list their fee schedules as part of their applications.

- (b) If the parties are unable to agree upon compensation of the case evaluator, then the assigned judge at the interlocutory hearing or final trial may order either or both parties to pay or share the cost of the case evaluator. When the compensation is set by the court, the costs will be predicated upon the complexity of the litigation, the degree of skill necessary to evaluate the case, and the ability of the parties to pay. Case Evaluators are required to provide pro bono hours and hours at reduced rates to defray case evaluation costs for parties with limited ability to pay. The number of hours required will be determined by the Superior Court Judges of the Cobb Judicial Circuit.
- (c) The case evaluator shall pay \$15.00 per case to the ADR office by the close of the next business day following receipt of payment or partial payment.

#### RULE 6. Immunity.

Immunity for case evaluators is governed by the applicable provision of the Uniform Rule.

#### RULE 7. Confidentiality.

Confidentiality for the case evaluation process is governed by the applicable provisions of the Uniform Rule.

#### RULE 8. Appearance.

The presence of parties at all case evaluation conferences is required unless the court finds that a party is a non-resident or is incapacitated. The Requirement that a party appear at a case evaluation conference is satisfied if the following persons are physically present:

- (a) The party and the party's legal counsel, if represented
- (b) The party's legal counsel if that legal counsel has:
  - (i) full authority to settle without further consultation, except that electronic consultation is permitted, and
  - (ii) a full understanding of the dispute and full knowledge of the facts
- (c) A representative of the insurance carrier for any insured party if that representative has full authority to settle without further consultation, except that electronic consultations are permitted.

The court discourages parties from using the ADR process of Case Evaluation if not represented by legal counsel because of the legal complexity of this type of ADR process.

#### RULE 9. Sanctions For Failure to Appear.

If a party fails to appear at a duly noticed case evaluation conference without good cause, the ADR office shall notify the assigned judge. The judge, upon motion, may impose sanctions against the party failing to appear, including an award of case evaluator and attorney costs. Case Evaluators shall have on file with the ADR office their cancellation fees for instances when a case is removed from the ADR calendar within 48 hours prior to the conference, excluding weekends and holidays.

#### RULE 10. Communication with Parties

The only ex parte communication outside of the case evaluation conference shall be for purposes of verifying appointment times and locations.

#### RULE 11. Communication with the Court.

Communications between the ADR office and the court and between case evaluators and the court are governed by the applicable provisions of the Uniform Rule.

#### RULE 12. Completion of Case Evaluation.

- (a) Case evaluation shall be completed within 45 days of the first evaluation conference unless extended by order of the court. Any motion seeking an extension of time for the case evaluation process shall be submitted to the ADR office which shall present the motion to the assigned judge.
- (b) Length of Case Evaluation. Case evaluation conferences are scheduled for three hours. However, the duration of the conference may be shortened or lengthened, depending upon the assessment of progress by the case evaluator and the parties.
- (c) The case evaluator may adjourn the case evaluation conference at any time and may set times for reconvening the conference notwithstanding Rule 2(b). No further notification is required.
- (d) The case evaluation conference will be considered closed and complete upon the evaluator's assessment of the strengths and weaknesses of each side's case and any assistance that can be given to help structure the discovery process.

*However, should all parties choose to turn the case evaluation into mediation during the evaluation process, the following will also apply with regard to completion of the case:*

- (e) Agreement. If an agreement is reached, it shall be reduced to writing within 10 calendar days, signed, and sent to opposing counsel. Counsel then has 10 calendar days to review, sign and file the document with the clerk's office. It is plaintiff's responsibility to draw the agreement unless all parties determine otherwise.
- (f) If a partial agreement is reached, it shall be reduced to writing and signed by the parties and counsel, if any.
- (g) If the parties do not reach an agreement as to any matter as the result of mediation, the case evaluator/mediator shall report the lack of an agreement to the ADR office, the ADR office shall notify the judge to whom the case was assigned of the failure to agree. With the consent of the parties, the case evaluator's/mediator's report may also identify any pending notices or outstanding legal issues, discovery process, or other action by any part which, if resolved or completed, would facilitate the possibility of a settlement.

#### RULE 13. The Case Evaluation Conference.

- (a) Not less than one week prior to the case evaluation, attorneys should submit a Case Evaluation Statement containing a brief summary of the facts and issues in the case. The statement should also summarize any efforts which have been undertaken by counsel to settle the case and any specific problems which have created a hindrance to the settlement of the case. The Case Evaluation statement is given to the case evaluator and is strictly confidential. It will not become part of the court record, nor will it be read by opposing counsel or any party. Counsel may also wish to bring additional work to the conference as there may be a period of waiting while the case evaluator researches any pertinent case law or theories. During the conference, counsel should be prepared to discuss the facts and evaluate the case. The ultimate decision-making authority of the direction and outcome of the ADR session rests with the parties, with the advice of counsel.
- (b) Notifying the Case Evaluator. Without exception, the case evaluator must be notified of any rescheduling or cancellations at least forty-eight hours before the case evaluation (not including weekends and holidays) regardless of whether relief has been granted by the court. Settlement before case evaluation is encouraged. It is the responsibility of the Plaintiff's counsel to notify the ADR office and the case evaluator in a timely manner of any settlement before the initial conference. Written confirmation is required.
- (c) The Role of Counsel. The case evaluator shall at all times be in control of the case evaluation and procedure to be followed during the evaluation process. It is strongly recommended that counsel be present at any case evaluation and that they present their client's side of the case. Counsel shall be permitted to communicate privately with their clients.

- (d) Conflicts. For purposes of court conflicts, as contemplated under the Uniform Rules of Superior Courts the case evaluation procedure shall be construed as a non-jury proceeding and counsel and parties may rely upon said designation in resolving any scheduling conflicts.
- (e) Scheduling and Rescheduling.
- (i) Case evaluation conferences generally last three hours and are typically scheduled between the hours of 8:00 a.m. and 5:00 p.m. The times are contingent upon availability of space in the courthouse. Any case evaluation scheduled after 5:00 p.m., on the weekend, or holidays shall be held with the consent of all parties and their counsel. Other times and locations may be determined by agreement of the parties.
  - (ii) Completion of ADR is a prerequisite to trial. The parties, within (10) days of the date of referral to ADR, may agree upon the type of ADR process, appropriate neutral, and a date and time for that ADR process. The rules require that the initial ADR conference be held within sixty (60) days after the referral of the case to ADR. It is the responsibility of Plaintiff's counsel or the Plaintiff to contact the ADR office within the (10) ten day period with their choice of neutral, date and time. If no response is received, the case will default to the mediation process and a mediator will be assigned to the parties along with a date set by the mediator and ADR office which **cannot** be changed absent good cause shown.
  - (iii) The party or attorney who is requesting that a case evaluation session be rescheduled must obtain consent from opposing counsel and the assigned case evaluator. The ADR office must also be notified of any rescheduling attempts. Cancellations (with no attempt to reschedule) of the case evaluation conference will only be permitted where one or both parties has applied for relief from the judge to whom the case has been assigned, or is in compliance with the Uniform Superior Court Rules as said rules relate to conflicts. NO OTHER UNILATERAL CANCELLATIONS OR RESCHEDULES WILL BE PERMITTED. IT IS A VIOLATION OF COURT RULES TO ATTEND ANY RESCHEDULED CASE EVALUATION UNDER THESE CIRCUMSTANCES.

#### RULE 14. Administration of the Program.

The ADR office shall be supervised by the Court Administrator. The ADR office shall be responsible for all administrative matters pertaining to the program and shall be served with copies of any papers pertaining to ADR. The ADR office must be notified of all cancellations. Cancellations due to settlement must be confirmed in writing. The ADR office must also be notified of any settlements occurring after ADR. The court retains ultimate authority over the program.